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SDITC

South Dakota Independent Telephone Coalition, Inc.

Richard D. Coit
Executive Director
richcoit@sditc.org
http://www.sditc.org

February 22, 2001

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Ms. Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: CC Docket #96-45, In the Matter of the Federal-State Joint Board on Universal Service, FNPR, FCC 01-8

Dear Ms. Roman-Salas:

Enclosed please find one original and four copies of the Comments of the South Dakota Independent Telephone Coalition, Inc. in reference to CC Docket No. 96-45, in response to FNPR, RCC 01-8. In accordance with the instructions contained therein, three copies have also been sent to Sheryl Todd and an electronic disk copy has been sent to the Commission's copy contractor, International Transcription Service, and copies have been sent to all other persons on the service list.

Thank you for your assistance.

Sincerely,

Richard D. Coit
Executive Director and General Counsel

Attachments

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320 E. Capitol Avenue ● P.O. Box 57 ● Pierre, SD 57501 ● Ph: 605/224-7629 ● Fax 605/224-1637

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Federal State Joint Board On Universal Service	)))	CC Docket No. 96-45 FCC 01-8

COMMENTS OF SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION ON RECOMMENDED DECISION OF FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

The South Dakota Independent Telephone Coalition, Inc. ("SDITC") submits these comments in response to the Commission's Further Notice of Proposed Rulemaking released in CC Docket No. 96-45 on January 12, 2001 (FCC 01-8) which seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding a plan for reforming the federal universal service support mechanism for rural carriers. The Joint Board, with its Recommended Decision, adopted the Rural Task Force ("RTF") Recommendation as a good foundation for implementing a new rural universal service plan.[1]

SDITC is an organization representing the interests of numerous independent, cooperative and municipal local exchange carriers operating in the State of South Dakota. All of the SDITC member LECs are "rural telephone companies" as defined in 47 U.S.C. § 153(37) and all have been designated as eligible telecommunications carriers ("ETCs") within their established rural service areas. As rural telephone companies committed to meeting universal service obligations within their service areas, all of the SDITC member LECs have a strong interest in this proceeding and will be impacted by any of the universal service reform proposals that are ultimately adopted.

[1] *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, FCC 00J-4 (released December 22, 2000) and Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (released September 29, 2000).

With respect to the RTF Recommendation and the Joint Board's decision supporting such recommendation, SDITC sees the specific reform plan presented as very positive. The plan recognizes many of the problems that are presented in converting the present system of federal universal service support to a mechanism that will be sustainable and sufficient as markets become more competitive. Many of the recommended proposals would improve the current rural carrier support mechanism and bring some stability for future investment decisions. In addition, proper recognition is given to the need for additional universal service in conjunction with undertaking any interstate access reform. SDITC commends the Joint Board and RTF for their substantial work and generally supports the recommended reforms.

In some respects, however, SDITC believes the plan falls short of meeting the specific mandate found in Section 254(b)(4) of the Communications Act for "sufficient" Federal and State mechanisms to preserve and advance universal service. SDITC's concerns relate, primarily, to the following proposals: (1) the fourteen (14) percent number that is proposed as the eligibility threshold for additional "safety net" support; (2) the caps that are proposed for application to "safety valve" support; and (3) the proposals that may limit the disaggregation of high cost support in rural service areas to only two (2) zones per wire center.

I. RTF Recommendation and the MAG Plan.

Since release of the RTF Recommendation, a group of national telecommunications organizations consisting of the National Rural Telecom Association ("NRTA"), National Telephone Cooperative Association ("NTCA"), Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), and the United States Telecom Association ("USTA") have filed with the Commission a Petition for Rulemaking.[2] Through this Petition, these organizations, identifying themselves as the LEC "Multi-Association Group"

[2] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Petition for Rulemaking of the LEC Multi-Association Group, October 20, 2000, CC Docket No. 00-256.

("MAG") have presented a holistic plan for reforming the Commission's regulation of incumbent LECs that are not subject to price cap regulation (non-price cap LECs, including all rural carriers). The plan presented by MAG to the Commission offers a comprehensive approach that is intended to address not only rural carrier universal service reform, but also interstate access reform and incentive regulation for such carriers. This comprehensive plan takes the same policy direction as the RTF Recommendation, but with respect to universal service reform there are some differences. In general, SDITC believes that the MAG Plan with these differences is more in line with the intent of Congress as demonstrated by the universal service principles stated in Section 254 of the Communications Act. The RTF stated in its Recommendation that "the heart of the Congressional directive is contained in the universal service principles of Section 254."[3] Section 254(b) expressly states that universal service support should not only be "specific" and "predictable", but also "sufficient." SDITC is pleased that the Commission has undertaken a process that allows the MAG Plan to be considered in tandem with the RTF Recommendation and Joint Board decision. SDITC urges the Commission in reviewing all of the related proposals to stay committed to meeting all federal universal service principles established by the Communications Act including the sufficiency criteria.

II. Use of a Modified Embedded Cost Mechanism.

SDITC strongly supports the decision of the RTF and Joint Board in recommending the use of embedded costs for rural carriers in determining universal service support. As indicated in its Recommendation, the RTF gave careful consideration to the proxy cost model incorporated into the universal service support mechanism adopted for non-rural carriers. The RTF after much study determined that the "Synthesis Model" developed for determining non-rural carrier universal service support would not be an appropriate tool for establishing a new rural carrier universal service support mechanism. The RTF concluded that the proxy Synthesis Model

[3] RTF Recommendation, p. 7.

would not produce a sufficient universal service mechanism for rural carriers that is in the public interest and consistent with the principles of the 1996 Act.[4] These conclusions of the RTF were based on significant empirical data, compiled and evaluated, showing very clearly that population, geographic and demographic differences between rural areas and the diverse size and operations of rural carriers across the country make it impossible to develop a rural carrier proxy model that is workable for universal service support purposes.[5] Specifically, the RTF recommended the adoption of a "Modified Embedded Cost Mechanism." The mechanism recommended has been labeled as "modified" because it takes into account some of the weaknesses of the current system and includes certain modifications to address these weaknesses and to adapt the mechanism to the current environment.[6]

The decisions of the RTF and Joint Board recommending an embedded cost method rather than a proxy method to identify universal service costs are supported by substantial data documenting the differences between rural service areas and rural carriers and are also consistent with various provisions in the Communications Act which recognize the unique circumstances faced by rural carriers. In the Telecommunications Act of 1996, Congress rejected a one-size-fits-all approach for telecommunications companies, and enacted special provisions for rural telephone companies.[7] These provisions provide clear legal grounds for the RTF and Joint Board's decision to treat rural carriers differently and reject the use of a proxy cost model for determining rural carrier support.

III. "Safety Net" Support.

SDITC also supports proposals that are designed to incorporate more flexibility into the existing caps on universal service support. The RTF and Joint Board recommend that the current

[4] RTF Recommendation, p. 20.
[5] See RTF White Paper No. 2, "The Rural Difference".
[6] RTF Recommendation, p. 21.
[7] 47 U.S.C. Section 153(37); Section 251(f); Section 253(f); Section 254(b)(3); Section 254(h); Section 214(e)(2); and Section 214(e)(5).

high cost loop ("HCL") fund be re-based and that a new cap factor be applied on a going-forward basis. The new cap would be indexed annually by applying a "Rural Growth Factor" that would be based on an annual inflation factor and also growth in loop counts. In addition, a "safety net" would be established allowing for additional universal service support where a carrier's growth in telecommunications plant in service for any single year is greater than 14%.

SDITC sees these proposals to re-index the HCL fund cap and to establish additional "safety net" support as substantial improvements, but remains concerned insofar as any fund cap has the potential to deny recovery for infrastructure investments that would otherwise qualify as being necessary for universal service. It is our belief that any cap, in some cases, will slow the deployment of new technology and advanced services in high cost rural areas. This potential is contrary to the provisions found in Section 254 of the Communications Act which are intended to renew and actually strengthened the national commitment to universal service and also the provisions in Section 706 of the Act which are intended to encourage the reasonable and timely deployment of advanced telecommunications services to all Americans.

The RTF as part of its Recommendation asks that a "no barriers to advanced services" policy be adopted and specifically states that this policy should allow universal service funding to "support plant that can, either as built or with the addition of plant elements, when available, provide access to advanced services."[8] In addition, it is stated that "the federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services."[9] Despite the various reform proposals that would incorporate flexibility into the new cap that is proposed, there will be instances where carriers will be deprived of valid recovery and this seems counter to these stated "no barrier" principles.

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[8] RTF Recommendation, p. 22.
[9] Id. at p. 23.

SDITC urges the Commission to give the utmost priority to making sure that universal service support is sufficient for all areas and to consider a complete removal of the HCL fund cap. If the Commission, however, comes to the conclusion that a cap on the fund must be maintained, SDITC believes a lowering of the RTF's 14% safety net qualification factor should be considered. It is our understanding that the RTF arrived at this percentage by simply doubling the average of the Rural Growth Factor in recent years. Past experience in South Dakota indicates that this percentage is too extreme and that it would rarely, if ever, offer any additional assistance to carriers that are making substantial and necessary infrastructure investments. Requiring new investments at such a high level before additional support comes available does not fairly recognize the actual construction and service capabilities of most rural telephone companies. Under such a system, rural carriers will be pressed to "stack up" all planned construction projects into a single calendar year to become eligible for the additional safety net support. The effect of this could then be delays in the delivery of new services or rushed deployments accompanied by lower quality service. At this point there does not appear to be any evidentiary basis behind the 14% number and SDITC would encourage the Commission to do more study and arrive at a factor that more closely reflects rural carrier capabilities reality and that is less of a disincentive to rural area investment. If the Commission is truly concerned about the pace of broadband deployments in rural areas and favors a "no barriers to advanced services" policy similar to that supported by the RTF, a more reasonable number should be adopted.

IV. "Safety Valve" Support.

The RTF and Joint Board have indicated concern with Section 54.305 of the Commission's current rules, which provides that per-line support for a transferred exchange remains equal to the per-line amount of support that the seller was eligible to receive prior to the transfer. They have recommended that the Commission establish a "safety valve mechanism" for rural carriers which acquire access lines due to sale or merger that would provide some additional universal service support for new investments. In its illustration of how such a mechanism would work, the safety valve universal service support would be additional HCL support, over and above the support transferable to the study area under the provisions of Section 54.305. According to the RTF's illustration, at the end of the first year of operations a study area HCL "expense adjustment" would be calculated (the "index year expense adjustment"). At the end of each subsequent year, a study area HCL "expense adjustment" would be calculated and compared to the "index year expense adjustment." Fifty percent of any positive difference between the subsequent year "expense adjustment" and the "index year expense adjustment" would be designated as the safety valve adjustment and would be provided as universal service support to the study area in addition to amounts available under Section 54.305. However, the sum of the safety valve adjustments for all study areas would not exceed five percent of the indexed HCL fund cap for rural carriers.

SDITC agrees that acquiring rural carriers should receive universal service support to offset the infrastructure improvements made after the sale or transfer of lines. As indicated by the RTF, Section 54.305 of the Commission's current rules limits the ability of acquiring carriers to make the necessary investments to upgrade networks and to ensure that customers in rural areas have access to services that are comparable to those in urban areas. Similar concerns with Section 54.305 were specifically expressed by the Joint Board in its Recommended Decision concerning hold-harmless universal service support for non-rural carriers, in which the Joint Board stated that the rule has "negative consequences" with regard to transfers of exchanges between carriers that are not both receiving support based on the forward-looking mechanism because it "prevents the acquiring carrier from receiving an amount of support related to the costs of providing supported services in the transferred exchange."[10]

SDITC is, however, concerned with both the five (5) percent cap and fifty (50) percent limitation that have been proposed for application to the "safety valve" support. There will be instances where these caps deny adequate recovery and this will stall the delivery of service improvements to acquired exchange areas. Moreover, regarding the five percent cap, the RTF has clearly indicated that it was not offered as a recommended figure, but was only included in its Recommendation as an illustrative example. The RTF has not taken a position on what the actual cap percentage or amount should be, but only advocates that the safety valve adjustment be capped at "some appropriate level." SDITC believes that five percent number is not reasonable and urges the Commission to evaluate both the five percent cap and fifty percent limitation to determine whether they are appropriate and consistent with the requirement of ensuring adequate universal service support for rural areas.

V. Disaggregation and Targeting of Support.

The RTF and Joint Board recommend a flexible system by which a company may disaggregate federal high cost support within its study area. Carriers would choose to follow one of three disaggregation "Paths" based on their specific needs, either: (1) certifying to the state commission that it chooses not to disaggregate; (2) filing a company specific disaggregation plan with the state commission for regulatory approval; or (3) presenting a self-certified filing to the state commission which disaggregates support into no more than two cost zones per wire center.

SDITC agrees that disaggregation is imperative at the point where competition enters the rural carrier service area. Disaggregation is necessary to accurately target support and to prevent cream skimming by new entrants that may only be interested in serving the most attractive

[10] *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-1, at ¶20, released June 30, 2000.

pockets in rural areas. SDITC also agrees with the proposal to permit LECs to choose between various disaggregation paths as a means of taking into account individual company circumstances.

Nonetheless, SDITC does not believe that the proposal to limit disaggregation to two zones per wire center under "Path 3" is adequate or fair. Effectively, the RTF Recommendation proposes to establish two zones as the standard for disaggregation, but leaves carriers some supposed flexibility to pursue other options. The RTF's White Paper No. 5 emphasizes the need to accurately target support within high-cost areas.[11] In addition, the need to achieve competitive neutrality through proper disaggregation is referenced as an important goal.[12] SDITC believes that the diverse population characteristics and terrain found in rural service areas renders the proposed two zones within Path 3 wholly inadequate. Limiting the disaggregation of universal service support to only two zones would not in many cases come close to fairly targeting support. Those areas most in need of support could be deprived of universal service funding and an unfair arbitrage opportunity would be created for competitive eligible telecommunications carriers. The process for porting support between competing carriers based on only one of the carrier's costs in itself creates arbitrage opportunities, this should not be worsened by mandating disaggregation at an insufficient level.

Path 2 of the RTF's Recommendation may be offered as a solution for those cases where two zones would not be adequate, but as specifically written it does not seem to offer a feasible alternative. Under Path 2, the carrier would develop its own plan and then would have to obtain state commission approval of the same through what would likely be an extensive administrative review process. The approved plan would then be "subject to change or challenge at any time." The entire process contemplated would be a lengthy and expensive one, and carriers would also

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[11] White Paper No. 5, "Competition and Universal Service", pp. 15, 18.
[12] White Paper No. 6, "Disaggregation and Targeting of Universal Service Support", p. 3.

be faced with the prospect of having to repeat the process at any time. Given these specifics, SDITC's questions whether Path 2 actually provides a realistic option for disaggregating support at a greater level.

SDITC therefore suggests that the Commission consider allowing for at least three disaggregation zones per wire center under Path 3, for those carriers who self-certify. Doing so would be relatively simple, inexpensive to administer, and easily understandable. The end result would be a more accurate representation of actual costs of providing service, and would produce a better match of support with costs. A reasonable matching of support with costs will provide support to all ETCs that is more consistent with cost relationships, and will help minimize opportunities for competitive ETCs to "cream skim" the incumbents' service areas. A three zone disaggregation plan is embraced in the MAG Plan, and SDITC reiterates its support for a Commission in this proceeding that is carefully coordinated with the MAG Plan.

As another means of addressing the concern, the Commission should at least consider revising Path 2 to indicate that any disaggregation plan that is given state commission approval under such Path would be in effect for a minimum period of years. This would allow for greater stability and perhaps bring more justification to pursuing Path 2 as an option for disaggregating support within a rural service area.

Dated this 22nd day of February, 2001.

Respectfully submitted,

South Dakota Independent Telephone Coalition

By: ______________________

Richard D. Coit,
General Counsel and Executive Director
(605) 224-7629

CERTIFICATE OF SERVICE

I hereby certify that an original and four (4) copies of the foregoing document were sent by Federal Express on the 1st day of November, 2000 to:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street SW, Room TW-A325
Washington, DC 20554

Three copies were sent by First Class Mail via U.S. Postal Service to:

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 Twelfth Street SW, Room 5-B540
Washington, DC 20554

An electronic disk copy was sent by First Class Mail via U.S. Postal Service to:

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445 Twelfth Street SW, Room CY-B400
Washington, DC 20554

One copy was sent by First Class Mail via U.S. Postal Service to the following persons:

The Honorable Susan Ness
Commissioner, FCC Joint Board Chair
Federal Communications Commission
445 12th Street, SW, Rm. 8-B115H
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, SW, Rm. 8-B115H
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, SW, Rm. 8-B115H
Washington, DC 20554

The Honorable Michael Powell
Commissioner
Federal Communications Commission
445 12th Street, SW, Rm. 8-A204
Washington, DC 20554

Dated this 22nd day of February, 2001

Richard D. Coit, General Counsel SDITC